

ESTTA Tracking number: **ESTTA478473**

Filing date: **06/17/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92055576
Party	Defendant Linda S Parry
Correspondence Address	LINDA S PARRY 119 ROCKLAND CENTER, SUITE 205 NANUET, NY 10954 UNITED STATES
Submission	Answer and Counterclaim
Filer's Name	Linda Parry
Filer's e-mail	linda@matchstickmarketing.com, lparry626@hotmail.com
Signature	/LP/
Date	06/17/2012
Attachments	MM_Answer.pdf (4 pages)(42889 bytes)

Registration Subject to the filing

Registration No	3972323	Registration date	06/07/2011
Registrant	Parry, Linda S 119 Rockland Center Suite 205 Nanuet, NY 10954 UNITED STATES		

Goods/Services Subject to the filing

Class 035. First Use: 2008/07/15 First Use In Commerce: 2008/07/15
All goods and services in the class are requested, namely: Advertising and marketing services, namely, promoting the goods and services of others

June 17, 2012

Proceeding No. 92055576

DEFENDANT'S (I) ANSWER TO COMPLAINT AND (II) COUNTERCLAIM IN RE:
REGISTRATION NO. 3972323

JURY TRIAL DEMANDED

I. ANSWER

Defendant Linda Parry responds to the Complaint filed by Plaintiff Matchstic LLC as follows:

1. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph A of the Complaint and denies the allegations contained therein on that basis.
2. Defendant denies the allegations contained in paragraph B of the Complaint.
3. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph C of the Complaint and denies the allegations contained therein on that basis.

GENERAL DENIAL

Defendant denies each and every factual allegation in the Complaint that is not specifically admitted or otherwise addressed in the preceding paragraphs and demands strict proof thereof.

AFFIRMATIVE DEFENSES

1. The Complaint and each cause of action contained therein fails to state facts sufficient to constitute a cause of action.
2. Defendant alleges the Complaint is barred by the applicable statute(s) of limitations.
3. Defendant alleges the Complaint is barred by Defendants' innocent intent.
4. Defendant alleges the Complaint is barred by the doctrine of laches.
5. Defendant alleges the Complaint is barred by the doctrine of natural expansion.
6. Defendant alleges the Complaint is barred by the doctrine of estoppel.
7. Defendant alleges the Complaint is barred by the doctrine of acquiescence.
8. Defendant alleges the Complaint is barred by the doctrine of waiver.
9. Defendant alleges the Complaint is barred by the doctrine of unclean hands.
10. Defendant alleges the Complaint is barred by the doctrine of Fair Use.
11. Defendant reserves the right to amend her Answer and to assert additional defenses and/or supplement, alter or change her Answer and defenses upon the discovery of more definitive facts and upon the completion of a continuing investigation and discovery.

RELIEF REQUESTED

WHEREFORE, Defendant respectfully requests that Plaintiff's take nothing by their complaint and that Defendant be awarded reasonable attorneys fees, costs, legal document assistant costs and whatever other relief the Court deems appropriate. Additionally, Defendant requests that the Court issue a judgment declaring that the Plaintiff Cease and Desist use of its mark.

II. COUNTERCLAIM

For its counterclaims against Counterclaim Defendant Matchstic LLC, Counterclaim Plaintiff Matchstick Marketing, Inc. alleges as follows:

12. Counterclaim Plaintiff Matchstick Marketing, Inc. is a New York corporation.
13. Plaintiff Matchstick Marketing, Inc. secured federal registration from the United States Patent and Trademark Office of its mark "Matchstick Marketing" effective on June 7, 2011 for Int. Cl. 35: advertising and marketing services.
14. Plaintiff has an established marketing firm, which offers services including, but not limited to, branding development, public relations, website development, business consulting, media placement and more. This mark has at no time been abandoned; Plaintiff has an established client base, continues to prospect new business and receives revenue from this business.
15. In Plaintiff's due diligence in securing federal registration of its mark, Counterclaim Defendant Matchstic LLC was not discovered.
16. Plaintiff believes that the marks are confusingly similar and coexistence will dilute the effectiveness of Plaintiff's mark. As the registered trademark owner, Plaintiff requests that the Court prohibit challenges to its mark and further enforce an injunction against Defendant to cease and desist use of its mark due to trademark infringement.
17. Plaintiff believes that Defendant is fraudulently seeking to benefit from its already established goodwill generated from the mark.
18. If Defendant has used its mark since 2003 as claimed, Defendant unreasonably and inexcusably delayed seeking trademark protection for nearly a decade and therefore should be banned from protection for its slumber.
19. Plaintiff filed for federal registration of "Matchstick Marketing" in 2008, which is four years ago. Defendant delayed unreasonably before asserting or enforcing rights against defendant (laches) and therefore should be stopped from claiming infringement (estoppel).
20. Defendant's mark is not the correct spelling of the word, Matchstick. Given the nature of their claimed business and the importance of phonetic spelling in today's digital age to be found in the search engines, Defendant's negligence in securing a more relevant domain name and/or failing to conduct aggressive search engine optimization efforts is

evidence of Defendant's apparent haste and assumed abandonment of its mark.

21. Plaintiff has and will continue to encounter damages from this trademark infringement and therefore seeks restitution.

22. Plaintiff has sought amicable alternative dispute resolution by offering a fair market value to sell its mark. Defendant has refused both offers.

In accordance with federal law, Defendant Linda Parry and Counterclaim Plaintiff Matchstick Marketing, Inc. demand a trial by jury on all issues so triable.

Respectfully submitted,

Dated this 17th day of June 2012.

By:

_____ S/LP _____

Linda Parry

119 Rockland Center, Suite 205

Nanuet, NY 10954

Linda@matchstickmarketing.com

(914) 523-1976 Telephone

A copy of this Answer has been served to the Plaintiff via First Class mail at the address below:

Mr. Brad C. Parrott

Foltz Martin, LLC

3525 Piedmont Road NE

Atlanta, GA 30305-1541